

1 **Appendix One:**

2
3 **Integrated Instruction and Special Verdict Form –**
4 **Section 1983 Claim –**
5 **Excessive Force (Stop, Arrest, or other “Seizure”)**
6

7
8
9 **Instructions**

10
11 **Section 1983**
12

13 [Plaintiff] is suing under Section 1983, a civil rights law passed by Congress that provides
14 a remedy to persons who have been deprived of their federal [constitutional] [statutory] rights under
15 color of state law.
16

17 **Elements of Claim**
18

19 [Plaintiff] must prove both of the following elements by a preponderance of the evidence:
20

21 First: [Defendant] acted under color of state law.
22

23 Second: While acting under color of state law, [defendant] deprived [plaintiff] of a federal
24 [constitutional right] [statutory right].
25

26
27 I will now give you more details on action under color of state law, after which I will tell you
28 the elements [plaintiff] must prove to establish the violation of [his/her] federal [constitutional right]
29 [statutory right].
30

31 **Action Under Color of State Law**
32

33 The first element of [plaintiff]’s claim is that [defendant] acted under color of state law. This
34 means that [plaintiff] must show that [defendant] was using power that [he/she] possessed by virtue
35 of state law.
36

37 A person can act under color of state law even if the act violates state law. The question is
38 whether the person was clothed with the authority of the state, by which I mean using or misusing
39 the authority of the state.
40

41 By “state law,” I mean any statute, ordinance, regulation, custom or usage of any state. And
42 when I use the term “state,” I am including any political subdivisions of the state, such as a county
43 or municipality, and also any state, county or municipal agencies.

1 *[Insert appropriate instruction on action under color of state law. See Instructions 4.4.1*
2 *through 4.4.3.]*

3
4 Deprivation of a Federal Right

5
6 [I have already instructed you on the first element of [plaintiff]’s claim, which requires
7 [plaintiff] to prove that [defendant] acted under color of state law.]

8
9 The second element of [plaintiff]’s claim is that [defendant] deprived [him/her] of a federal
10 [constitutional right] [statutory right].

11
12 The Fourth Amendment to the United States Constitution protects persons from being
13 subjected to excessive force while being [arrested] [stopped by police]. In other words, a law
14 enforcement official may only use the amount of force necessary under the circumstances to [make
15 the arrest] [conduct the stop]. Every person has the constitutional right not to be subjected to
16 excessive force while being [arrested] [stopped by police], even if the [arrest] [stop] is otherwise
17 proper.

18
19 In this case, [plaintiff] claims that [defendant] used excessive force when [he/she] [arrested]
20 [stopped] [plaintiff]. In order to establish that [defendant] used excessive force, [plaintiff] must
21 prove both of the following things by a preponderance of the evidence:

22
23 First: [Defendant] intentionally committed certain acts.

24
25 Second: Those acts violated [plaintiff]’s Fourth Amendment right not to be subjected to
26 excessive force.

27
28 In determining whether [defendant]’s acts constituted excessive force, you must ask whether
29 the amount of force [defendant] used was the amount which a reasonable officer would have used
30 in [making the arrest] [conducting the stop] under similar circumstances. You should consider all
31 the relevant facts and circumstances (leading up to the time of the [arrest] [stop]) that [defendant]
32 reasonably believed to be true at the time of the [arrest] [stop]. You should consider those facts and
33 circumstances in order to assess whether there was a need for the application of force, and the
34 relationship between that need for force, if any, and the amount of force applied. The circumstances
35 relevant to this assessment can include *[list any of the following factors, and any other factors,*
36 *warranted by the evidence]*:

- 37
38 ● the severity of the crime at issue;
39 ● whether [plaintiff] posed an immediate threat to the safety of [defendant] or others;
40 ● the possibility that [plaintiff] was armed;
41 ● the possibility that other persons subject to the police action were violent or dangerous;
42 ● whether [plaintiff] was actively resisting arrest or attempting to evade arrest by flight;
43 ● the duration of [defendant]’s action;

- the number of persons with whom [defendant] had to contend; and
- whether the physical force applied was of such an extent as to lead to unnecessary injury.

The reasonableness of [defendant]’s acts must be judged from the perspective of a reasonable officer on the scene. The law permits the officer to use only that degree of force necessary to [make the arrest] [conduct the stop]. However, not every push or shove by a police officer, even if it may later seem unnecessary in the peace and quiet of this courtroom, constitutes excessive force. The concept of reasonableness makes allowance for the fact that police officers are often forced to make split-second judgments in circumstances that are sometimes tense, uncertain, and rapidly evolving, about the amount of force that is necessary in a particular situation.

As I told you earlier, [plaintiff] must prove that [defendant] intended to commit the acts in question; but apart from that requirement, [defendant]’s actual motivation is irrelevant. If the force [defendant] used was unreasonable, it does not matter whether [defendant] had good motivations. And an officer’s improper motive will not establish excessive force if the force used was objectively reasonable.

What matters is whether [defendant]’s acts were objectively reasonable in light of the facts and circumstances confronting the defendant.

[Liability in Connection with the Actions of Another]

[If the case involves a claim that a defendant is liable for the actions of another, insert appropriate instruction here. See Instruction 4.6.1 (supervisory liability); Instruction 4.6.2 (liability for failure to intervene); Instructions 4.6.3 through 4.6.8 (municipal liability).]

Damages

[Insert appropriate instructions on damages here. See Instructions 4.8.1 through 4.8.3.]

Instructions Concerning Verdict Form

A verdict form has been prepared for your convenience. I will review this form with you now, and afterwards you will take it with you to the jury room.

[Form of special verdict read]

In order for you as a jury to answer a question, each juror must agree to the answer. In other words, your answers to each question must be unanimous. Your foreperson will write the unanimous answer of the jury in the space provided after each question, and will date and sign the form of special verdict when completed.

Nothing said in the verdict form is meant to suggest what your verdict should be. You alone have the responsibility for deciding the verdict.

Verdict Form

We, the jury, unanimously find the following by a preponderance of the evidence:

(1) Did [defendant] act under color of state law?

Answer: Yes _____ No _____

IF YOU ANSWERED "YES" TO PART 1, PROCEED TO PART 2. OTHERWISE, PLEASE STOP.

(2) Did [defendant] intentionally commit an act, under color of state law, that violated [plaintiff]’s Fourth Amendment right not to be subjected to excessive force?

Answer: Yes _____ No _____

IF YOU ANSWERED "YES" TO PART 2, PROCEED TO PART 3. OTHERWISE, PLEASE STOP.

(3) Did [defendant]'s act, described in Part (2) above, cause injury to [plaintiff]?

Answer: Yes No

IF YOU ANSWERED "YES" TO PART 3, PROCEED TO PART (4)(A), AND SKIP PART (4)(B).

IF YOU ANSWERED "NO" TO PART 3, SKIP PART 4(A) AND PROCEED TO PART 4(B).

(4)(A) Please state the amount that will fairly compensate [plaintiff] for any injury [he/she] actually sustained as a result of [defendant]'s conduct.

Answer: \$ _____
(Fill in Dollar Figure)

1 (4)(B) Because we answered “No” to Part 3, [plaintiff] is awarded nominal damages in the
2 amount of \$ 1.00.
3
4

5 AFTER ANSWERING PART 4, PROCEED TO PART 5.
6
7

8 (5)(A) Did [defendant] act maliciously or wantonly in violating [plaintiff]’s rights?
9

10 Answer: Yes _____ No _____
11
12

13 IF YOU ANSWERED “YES” TO PART (5)(A), PROCEED TO PART (5)(B). OTHERWISE,
14 PLEASE STOP.
15
16

17 (5)(B) Do you award punitive damages against [defendant]?
18

19 Answer: Yes _____ No _____
20

21 If yes, in what amount?
22

23 Answer: \$ _____
24 (Fill in Dollar Figure)
25
26

27 SO SAY WE ALL, this ____ day of _____, 200[].
28
29

30 _____
Foreperson

Appendix Two: Instructions Covered in Other Sets

As noted previously, the Committee chose the topics for its substantive instructions (concerning Section 1983 claims and employment-related claims) because those topics frequently arise in cases litigated within the Third Circuit. The index that follows lists model instructions from other sources that cover other topics. At the end of this Appendix is a statistical summary showing the frequency with which various types of claims result in completed jury trials in district courts within the Third Circuit.

Instructions for Use in Other Federal Circuits

- 1st Circuit (Criminal) (1997) (available online at <http://www.med.uscourts.gov/practices/crimjuryinstrs.htm>, and on Westlaw in the FED-JICRIM database)
 - *See also* Judge Hornby's Updated Revisions to the Pattern Criminal Jury Instructions for the District Courts of the First Circuit (2009), available at <http://www.med.uscourts.gov/practices/crimjuryinstrs.htm>, and Judge Hornby's Draft Civil Instructions, available at <http://www.med.uscourts.gov/practices/civjuryinstrs.htm>
- 5th Circuit (2006) (available online at <http://www.lb5.uscourts.gov/juryinstructions/>, and on Westlaw in the FED-JICIV database)
- 6th Circuit (Criminal) (2005, updated 2007) (available online at http://www.ca6.uscourts.gov/internet/crim_jury_insts.htm, and on Westlaw in the FED-JICRIM database)
- 7th Circuit (2005) (available online at http://www.ca7.uscourts.gov/Pattern_Jury_Instr/pattern_jury_instr.html, and on Westlaw in the FED-JICIV database)
 - Existing instructions include Pattern Civil Jury Instructions; Pattern Criminal Jury Instructions; Pattern Federal Employer Liability Act and Similar Statutes Instructions; and Pattern Patent Law Jury Instructions.
 - Proposed instructions include Proposed Trademark Pattern Civil Jury Instructions; Proposed Pattern Copyright Jury Instructions; and Proposed Family and Medical Leave Act Pattern Jury Instructions.
- 8th Circuit (2007) (available online at

1 http://www.juryinstructions.ca8.uscourts.gov/civil_instructions.htm, and on Westlaw in
2 the FED-JICIV database)

3
4 ○ Proposed Model Civil Jury Instructions (2008) also available at
5 http://www.juryinstructions.ca8.uscourts.gov/civil_instructions.htm
6

7 ● 9th Circuit (2007, updated March 2009) (available online at
8 <http://207.41.19.15/web/sdocuments.nsf/civ> and on Westlaw in the FED-JICIV database)
9

10 ● 10th Circuit (Criminal) (2005) (available online at
11 <http://www.ca10.uscourts.gov/clerk/rulesandforms.php> and on Westlaw in the
12 FED-JICRIM database)
13

14 ● 11th Circuit (2005) (available online at
15 <http://www.ca11.uscourts.gov/documents/pdfs/civjury.pdf>, and on Westlaw in the
16 FED-JICIV database)
17
18

19 **Instructions from States within the Third Circuit**

20
21 ● Delaware (available on Westlaw in the DE-JICIV database)
22

23 ● New Jersey (available online at <http://www.judiciary.state.nj.us/civil/civindx.htm>, and on
24 Westlaw in the NJ-JICIV database)
25

26 ● Pennsylvania (available on Westlaw in the PA-JICIV database)
27
28

29 **Instructions from Other Sources**

30
31 ● American Bar Association (ABA):
32

- 33 ○ Model Jury Instructions in Civil Antitrust Cases (2005)
- 34 ○ Model Jury Instructions: Patent Litigation (2005)
- 35 ○ Model Jury Instructions: Securities Litigation (1996)
36

37 ● American Intellectual Property Law Association, Model Patent Jury Instructions (2005,
38 updated 2008) (available online at
39 [http://www.aipla.org/Template.cfm?template=/ContentManagement/ContentDisplay.cfm](http://www.aipla.org/Template.cfm?template=/ContentManagement/ContentDisplay.cfm&ContentID=10448)
40 &ContentID=10448)
41

42 ● Michael Avery, David Rudovsky & Karen M. Blum, Police Misconduct: Law and
43 Litigation (3d ed. 2004) (available on Westlaw in the POLICEMISC database)

- Federal Circuit Bar Association, Model Patent Jury Instructions (updated 2008) (available online at www.fedcirbar.org)
- Kevin F. O'Malley, Jay E. Grenig, & William C. Lee, Federal Jury Practice and Instructions – Civil (2006 & Supp. 2009) (available on Westlaw in the FED-JICIV database)
- Leonard Sand, John S. Siffert, Walter P. Loughlin, Steven A. Reiss & Nancy Batterman, Modern Federal Jury Instructions – Civil (looseleaf, updated through 2007) (available on Lexis in the Matthew Bender library)
- Martin A. Schwartz & George C. Pratt, 4 Section 1983 Litigation: Jury Instructions (looseleaf, updated through 2007)

Instructions That Pertain to Federal Claims and Are Not Covered in Third Circuit Models

- Admiralty
 - 5th Cir. – 4.1 - 4.13
 - 8th Cir. – 8.10 - 8.90
 - 9th Cir. – 7.1 - 7.12
 - 11th Cir. – Federal Claims 6.1 & 6.2
 - O'Malley, Grenig & Lee – Chapter 156
 - Sand – Chapter 90
- Antitrust
 - 5th Cir. – 6.1 & 6.2
 - 11th Cir. – Federal Claims 3.1 & 3.2
 - ABA, Model Jury Instructions in Civil Antitrust Cases
 - O'Malley, Grenig & Lee – Chapter 150
 - Sand – Chapters 79 - 81
- Bankruptcy
 - O'Malley, Grenig & Lee – Chapter 164
- Civil Rights – Education Discrimination

- O'Malley, Grenig & Lee – Chapter 177
- Civil Rights – First Amendment – Libel
 - Sand – Chapter 91
- Civil Rights – Housing Discrimination
 - O'Malley, Grenig & Lee – Chapter 169
 - Sand – 87-37 - 87-64A
- Civil Rights – Section 1983 Claims
 - Conditions of Confinement
 - 5th Cir. – 10.7
 - 7th Cir. – 7.10
 - O'Malley, Grenig & Lee – 166.22
 - Schwartz & Pratt – 11.02.1 - 11.02.5
 - Denial of Access to Courts
 - 7th Cir. – 8.01 - 8.03
 - 11th Cir. – Federal Claims 2.1
 - O'Malley, Grenig & Lee – 166.24
 - Law Enforcement – Other Violations
 - Excessive Bail
 - Schwartz & Pratt – 9.04
 - Failure to Produce Exculpatory Evidence
 - Avery, Rudovsky & Blum – 12.29 - 12.30
 - Schwartz & Pratt – 9.01
 - Manufactured, Coerced, or False Evidence
 - Avery, Rudovsky & Blum – 12.25 - 12.28
 - Schwartz & Pratt – 9.02
 - Plaintiff's Status

- Schwartz & Pratt – 3.04.1 - 3.04.3
- Prisoner – Disciplinary Sanctions
 - Schwartz & Pratt – 11.04.1 - 11.04.3
 - Prisoner – Retaliation
 - 7th Cir. – 6.02 & 6.03
 - 11th Cir. – Federal Claims 2.1
 - Procedural Due Process
 - O’Malley, Grenig & Lee – 168.80 - 168.151
 - Schwartz & Pratt – 6.01.1 - 6.01.4
 - Regulatory Takings
 - Schwartz & Pratt – 6.03.1
 - Substantive Due Process
 - Schwartz & Pratt – 6.02.1 - 6.02.5
 - Unreasonable Search
 - 9th Cir. – 9.11 - 9.15
 - Avery, Rudovsky & Blum – 12.15 - 12.19
 - O’Malley, Grenig & Lee – 165.22
 - Sand – 87-74B
- Civil Rights – Section 1985 Conspiracy Claims
 - O’Malley, Grenig & Lee – Chapter 167
 - Sand – 87-100 - 87-111
- Damages
 - 5th Cir. – 2.22 (cautionary instruction); 15.1 - 15.15
 - 9th Cir. – 5.1 - 5.6
 - 11th Cir. – Supplemental Damages 1.1 - 6.1
 - Schwartz & Pratt – Chapter 18

1
2 ● Defenses

3
4 ○ Miscellaneous

5
6 - O'Malley, Grenig & Lee – 107.01 - 107.04

7
8 ○ Statute of Limitations

9
10 - 5th Cir. – 14.1

11
12 ● Eminent Domain

13
14 ○ 5th Cir. – 13.3

15 ○ 11th Cir. – Federal Claims 9.1

16 ○ O'Malley, Grenig & Lee – Chapter 154

17
18 ● Evidence

19
20 ○ Admissions in Pleadings

21
22 - O'Malley, Grenig & Lee – 101.46

23
24 ○ Credibility of Witnesses

25
26 - 1st Cir. (Criminal) – 1.06, 3.06

27 - 6th Cir. (Criminal) – 1.07

28 - 10th Cir. (Criminal) – 1.08

29 - O'Malley, Grenig & Lee – 105.01 - 105.12

30
31 ○ Cross-Examination of Character Witness

32
33 - 8th Cir. – 2.07

34
35 ○ Demonstrative Evidence

36
37 - 5th Cir. – 2.8

38
39 ○ Fingerprints

40
41 - O'Malley, Grenig & Lee – 104.51

42
43 ○ Habit or Routine Practice Evidence

- Sand – 74-6
- Handwriting
 - O’Malley, Grenig & Lee – 104.52
- Impeachment by Inconsistent Statements
 - 1st Cir. (Criminal) – 2.02
 - 5th Cir. – 2.16
 - 6th Cir. (Criminal) – 7.04
 - 10th Cir. (Criminal) – 1.10
 - 11th Cir. – Federal Claims 4.1
 - O’Malley, Grenig & Lee – 105.04
- Inferences and Presumptions
 - O’Malley, Grenig & Lee – 104.20 - 104.27
- Oral Statements or Admissions
 - O’Malley, Grenig & Lee – 104.53
- Pleadings
 - O’Malley, Grenig & Lee – 103.32
- Requests for Admission
 - Sand – 74-15
- Similar Acts
 - 1st Cir. (Criminal) – 2.05
 - 5th Cir. – 2.10
 - 10th Cir. (Criminal) – 1.30
 - Sand – 74-6 - 74-8.1
- Statements by Patient to Doctor
 - Sand – 74-10

- Stipulations at Pretrial Conference
 - 1st Cir. (Criminal) – 2.01
 - O’Malley, Grenig & Lee – 101.47
- View of Location Permitted
 - O’Malley, Grenig & Lee – 102.26
- General Instructions
 - Common Counsel
 - Sand – 71-8
 - Judge’s Comments on Evidence
 - O’Malley, Grenig & Lee – 102.73
 - Judge’s Questions to Witnesses
 - O’Malley, Grenig & Lee – 101.30, 102.72
 - Missing Witness
 - 1st Cir. (Criminal) – 2.11
 - 5th Cir. – 2.9
 - O’Malley, Grenig & Lee – 104.25
 - No Transcript Available to the Jury
 - 9th Cir. – 1.13
 - Previous Trial
 - 1st Cir. (Criminal) – 1.03
 - 8th Cir. – 2.06
 - Federal Judicial Center Pattern Instruction 14
 - Sand 71-11
 - Publicity During Trial
 - O’Malley, Grenig & Lee – 102.12

- Reprimand of Counsel for Misconduct
 - O'Malley, Grenig & Lee – 102.70
 - Sand – 71-7
- Sequestration
 - O'Malley, Grenig & Lee – 101.12
- Sympathy
 - Sand – 71-10
- Tests and Experiments
 - 9th Cir. – 2.9
- Verdict
 - O'Malley, Grenig & Lee – 106.01 - 106.16
- Withdrawal of Claim
 - 8th Cir. – 2.11 & 3.05
 - O'Malley, Grenig & Lee – 102.60
- Intellectual Property
 - Copyright
 - 9th Cir. – 17.0 - 17.27
 - O'Malley, Grenig & Lee – Chapter 160
 - Sand – Chapter 86B
 - Patent
 - 5th Cir. – 9.1 - 9.11
 - 7th Circuit Pattern Patent Law Jury Instructions
 - 11th Cir. – Federal Claims 8.1
 - American Intellectual Property Law Association, Model Patent Jury Instructions
 - ABA, Model Jury Instructions: Patent Litigation

- Federal Circuit Bar Association
- O'Malley, Grenig & Lee: Chapter 158
- Sand: Chapters 81 & 86
- Trademark
 - 9th Cir. – 15.0 - 15.27
 - O'Malley, Grenig & Lee – Chapter 159
 - Sand – Chapter 86A
- Labor & Employment
 - Employee's Claims Against Employer and Union
 - 5th Cir. – 11.3
 - 9th Cir. – 13.1 & 13.2
 - 11th Cir. – Federal Claims 1.9.1
 - O'Malley, Grenig & Lee – 157.80 - 157.140
 - Employer's Claim against Union
 - O'Malley, Grenig & Lee – 157.01 - 157.71
 - Fair Labor Standards Act
 - 5th Cir. – 11.1
 - 11th Cir. – Federal Claims 1.7.1
 - O'Malley, Grenig & Lee – Chapter 175
- Miscellaneous Statutory Actions
 - Automobile Dealers Day-in-Court Act
 - 5th Cir. – 13.1
 - 11th Cir. – Federal Claims 11.1
 - O'Malley, Grenig & Lee – Chapter 151
 - Emergency Medical Treatment And Active Labor Act
 - O'Malley, Grenig & Lee – Chapter 176
 - Fair Credit Reporting Act

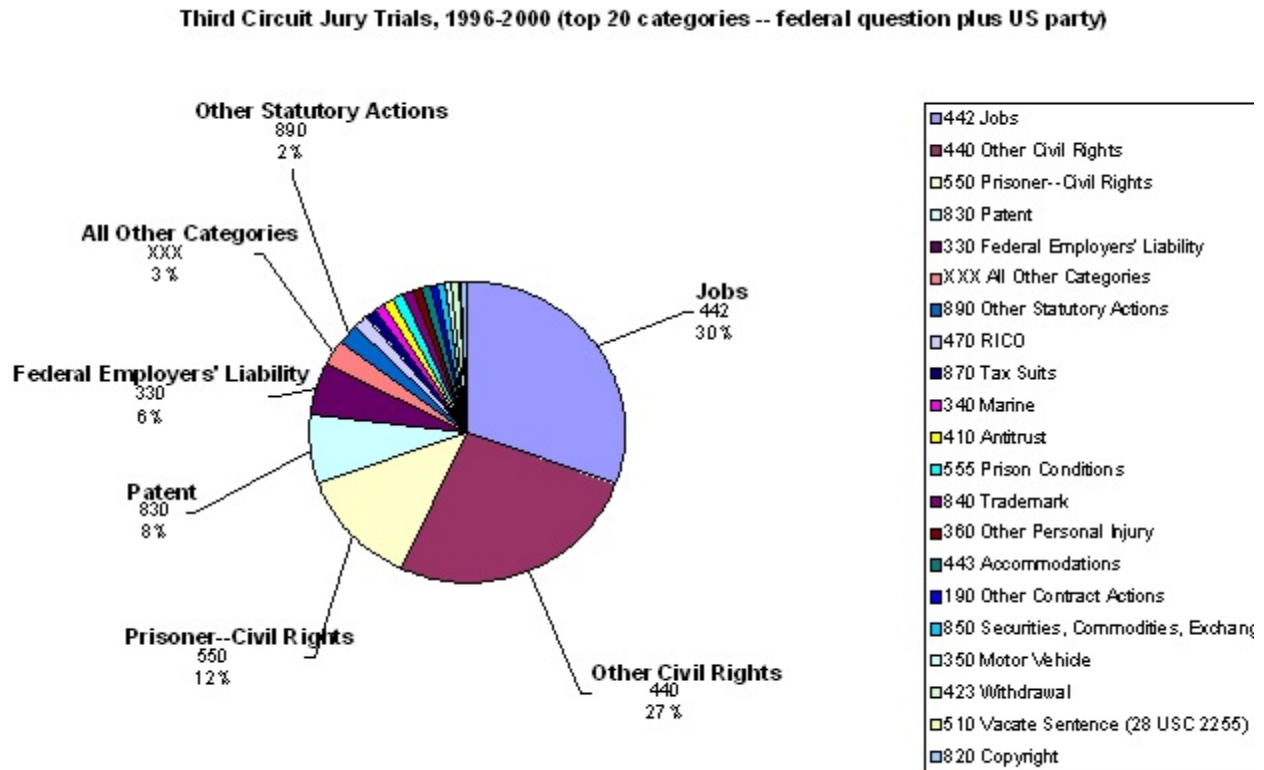
- O'Malley, Grenig & Lee – Chapter 153
 - False Claims Act
 - O'Malley, Grenig & Lee – Chapter 178
 - Interstate Land Sales Full Disclosure Act
 - 5th Cir. – 13.4
 - 11th Cir. – Federal Claims 13.1
 - Odometer Fraud
 - 5th Cir. – 13.2
 - 8th Cir. – 6.01 & 6.51
 - 11th Cir. – Federal Claims 12.1
 - Petroleum Marketing Practices Act
 - O'Malley, Grenig & Lee – Chapter 152
- Party Status
 - All Persons Equal Before the Law
 - O'Malley, Grenig & Lee – 103.11 & 103.12
 - Corporation as Party
 - 5th Cir. – 2.13
 - 11th Cir. – Basic 2.2
 - Sand – 72-1
 - O'Malley, Grenig & Lee – 103.12
 - Government as Party
 - 11th Cir. – Basic 2.3
 - Multiple Parties
 - 5th Cir. – 2.5
 - 6th Cir. (Criminal) – 2.01B-D
 - 8th Cir – 2.08A

- 9th Cir. – 3.11
- 10th Cir. (Criminal) – 1.21 - 1.22
- O’Malley, Grenig & Lee – 102.41, 103.10, 103.13, 103.14
- Railroad Employees
 - Federal Employers’ Liability Act
 - 5th Cir. – 5.1
 - 8th Cir. – 7.01 - 7.11
 - 9th Cir. – 6.1 - 6.7
 - 11th Cir. – Federal Claims 7.1
 - O’Malley, Grenig & Lee – 155.01 - 155.74
 - Sand – Chapter 89
 - Federal Safety Appliance Act
 - 5th Cir. – 5.2
 - 8th Cir. – 7.05
 - O’Malley, Grenig & Lee – 155.80 - 155.151
- RICO
 - 5th Cir. – 8.1
 - 10th Cir. (Criminal) – 2.74 - 2.76
 - 11th Cir. – Federal Claims 5.1
 - O’Malley, Grenig & Lee – Chapter 161
 - Sand – Chapter 84
- Securities
 - 5th Cir. – 7.1
 - 9th Cir. – 18.0 - 18.9
 - 11th Cir. – Federal Claims 4.1 - 4.3
 - ABA, Model Jury Instructions: Securities Litigation
 - O’Malley, Grenig & Lee – Chapter 162
 - Sand – Chapters 82 & 83
- Tax Refunds
 - 5th Cir. – 12.1 - 12.7
 - 9th Cir. – 8.1 & 8.2
 - 11th Cir. – Federal Claims 10.1 - 10.6

- 1 ○ O'Malley, Grenig & Lee – Chapter 163
- 2
- 3 ● Vicarious Liability
- 4
- 5 ○ 9th Cir. – 4.1 - 4.17
- 6 ○ 11th Cir. – Federal Claims 1.10.4.1 - 1.10.5.2
- 7 ○ O'Malley, Grenig & Lee – Chapter 108

Statistical Summary

As a rough method of estimating the relative frequency of different types of claims in jury trials within the Third Circuit, the following data may be useful. These data were obtained by searching the database maintained at <http://teddy.law.cornell.edu:8090/questtr7900.htm>; the database contains data “gathered by the Administrative Office of the United States Courts,



assembled by the Federal Judicial Center, and disseminated by the Inter-university Consortium for Political and Social Research,” *see id.* The search included “all” case categories, with any of three bases of jurisdiction (“US defendant,” “US plaintiff,” or “federal question”). (The search’s limitation on bases of jurisdiction was intended to eliminate diversity cases, which presumably would typically involve state-law claims.) The search was limited to completed jury trials, within the Third Circuit, that terminated during the years 1996 - 2000. (For a discussion of the year variable, see <http://teddy.law.cornell.edu:8090/year.htm>.) The case categories were defined by reference to the category selected on the Civil Cover Sheet (available online at <http://www.uscourts.gov/forms/JS044.pdf>). *See* Fifth ICPSR Edition (Ann Arbor, MI: Inter-university Consortium for Political and Social Research, 1993), available online at <http://teddy.law.cornell.edu:8090/codebook.htm>.

Appendix Three: Discussions of Jury Instructions and Decisionmaking

The following materials discuss various aspects of jury instructions and decisionmaking.

Walter F. Abbott et al., *Jury Research: A Review and Bibliography* (1993).

American Bar Association Principles for Juries & Jury Trials, SL044 ALI-ABA 653 (2005).

Martin J. Bourgeois, et al., *Nominal and Interactive Groups: Effects of Preinstruction and Deliberations on Decisions and Evidence Recall in Complex Trials*, 80 *Journal of Applied Psychology* 58 (1995).

David C. Brody & John Neiswender, *Judicial Attitudes Towards Jury Reform*, 83 *Judicature* 298 (2000).

A. Barry Cappello & G. James Strenio, *Juror Questioning: The Verdict Is In*, 36 *JUN Trial* 44 (2000).

Joe S. Cecil et al., *Citizen Comprehension of Difficult Issues: Lessons from Civil Jury Trials*, 40 *Am. U. L. Rev.* 727 (1991).

Robert P. Charrow & Veda R. Charrow, *Making Legal Language Understandable: A Psycholinguistic Study of Jury Instructions*, 79 *Colum. L. Rev.* 1306 (1979).

Charting a Future for the Civil Jury System: Report from an American Bar Association / Brookings Symposium (1992).

The Civil Juror: A Research Project Sponsored by the Roscoe Pound Foundation (1988), in John Guinther, *The Jury in America* (1988).

Neil P. Cohen & Daniel R. Cohen, *Jury Reform in Tennessee*, 34 *U. Mem. L. Rev.* 1 (2003).

Neil P. Cohen, *The Timing of Jury Instructions*, 67 *Tenn. L. Rev.* 681 (2000)

Committee on Federal Courts of the New York State Bar Association, *Improving Jury Comprehension in Complex Civil Litigation*, 62 *St. John's L. Rev.* 549 (1988).

Donna Cruse & Beverly A. Browne, *Reasoning in a Jury Trial: The Influence of Instructions*, 114 *J. Gen. Psychol.* 129 (1987).

B. Michael Dann & George Logan III, *Jury Reform: The Arizona Experience*, 79 *Judicature* 280

- (1996).
- B. Michael Dann., *"Learning Lessons" and "Speaking Rights": Creating Educated and Democratic Juries*, 68 Ind. L.J. 1229 (1993).
- B. Michael Dann et al., *Can Jury Trial Innovations Improve Juror Understanding of DNA Evidence?*, *Champion*, April 27, 2007, at 26.
- Dennis J. Devine et al., *Jury Decision Making*, 7 Psychol. Pub. Pol'y & L. 622 (2001).
- Shari Seidman Diamond, *How Jurors Deal with Expert Testimony and How Judges Can Help*, 16 J.L. & Pol'y 47 (2007).
- Shari Seidman Diamond, *Beyond Fantasy and Nightmare: A Portrait of the Jury*, 54 Buff. L. Rev. 717 (2006).
- Shari Seidman Diamond et al., *Juror Questions During Trial: A Window into Juror Thinking*, 59 Vand. L. Rev. 1927 (2006).
- Shari Seidman Diamond et al., *Juror Discussions During Civil Trials: Studying an Arizona Innovation*, 45 Ariz. L. Rev. 1 (2003).
- Shari Seidman Diamond & Neil Vidmar, *Jury Room Ruminations on Forbidden Topics*, 87 Va. L. Rev. 1857 (2001).
- Bethany K. Dumas, *Jury Trials: Lay Jurors, Pattern Jury Instructions, and Comprehension Issues*, 67 Tenn. L. Rev. 701 (2000).
- Amiram Elwork et al., *Juridic Decisions: In Ignorance of the Law or in Light of It?*, 1 Law & Hum. Behav. 163 (1977).
- Amiram Elwork et al., *Making Jury Instructions Understandable* (1982).
- Victor E. Flango, *Would Jurors Do a Better Job if They Could Take Notes?*, 63 Judicature 436 (1980).
- Lynne ForsterLee & Irwin A. Horowitz, *The Effects of Jury-Aid Innovations on Juror Performance in Complex Civil Trials*, 86 Judicature 184 (2003).
- Lynne ForsterLee & Irwin A. Horowitz, *Enhancing Juror Competence in a Complex Trial*, 11 Applied Cognitive Psychology 305 (1997).
- Lynne ForsterLee et al., *Effects of Notetaking on Verdicts and Evidence Processing in a Civil*

1 *Trial*, 18 Law & Hum. Behav. 567 (1994).

2

3 Lynne ForsterLee et al., *Juror Competence in Civil Trials: Effects of Preinstruction and*

4 *Evidence Technicality*, 78 J. Applied Psychol. 14 (1993).

5

6 Paula L. Hannaford et al., *The Timing of Opinion Formation by Jurors in Civil Cases: An*

7 *Empirical Examination*, 67 Tenn. L. Rev. 627, 650 (2000).

8

9 Paula L. Hannaford et al., *Permitting Jury Discussions During Trial: Impact of the Arizona*

10 *Reform*, 24 Law & Hum. Behav. 359 (2000).

11

12 Valerie P. Hans, *Empowering the Active Jury: A Genuine Tort Reform*, 13 Roger Williams U. L.

13 Rev. 39 (2008).

14

15 Valerie P. Hans, *Judges, Juries, and Scientific Evidence*, 16 J.L. & Pol'y 19 (2007).

16

17 Valerie P. Hans, *Inside the Black Box: Comment on Diamond and Vidmar*, 87 Va. L. Rev. 1917

18 (2001).

19

20 Valerie P. Hans & Stephanie Albertson, *Empirical Research and Civil Jury Reform*, 78 Notre

21 Dame L. Rev. 1497 (2003).

22

23 Valerie P. Hans et al., *The Arizona Jury Reform Permitting Civil Jury Trial Discussions: The*

24 *Views of Trial Participants, Judges, and Jurors*, 32 U. Mich. J.L. Reform 349 (1999).

25

26 Larry Heuer & Steven Penrod, *Trial Complexity: A Field Investigation of Its Meaning and Its*

27 *Effects*, 18 Law & Hum. Behav. 29 (1994).

28

29 Larry Heuer & Steven Penrod, *Juror Notetaking and Question Asking During Trials: A National*

30 *Field Experiment*, 18 Law & Hum. Behav. 121 (1994).

31

32 Larry Heuer & Steven D. Penrod, *Instructing Jurors: A Field Experiment with Written and*

33 *Preliminary Instructions*, 13 Law & Hum. Behav. 409 (1989).

34

35 Larry Heuer & Steven Penrod, *Increasing Jurors' Participation in Trials: A Field Experiment*

36 *with Jury Notetaking and Question Asking*, 12 Law & Hum. Behav. 231 (1988).

37

38 Rebecca Hollander-Blumoff & Matthew T. Bodie, *The Effects of Jury Ignorance about Damage*

39 *Caps: The Case of the 1991 Civil Rights Act*, 90 Iowa L. Rev. 1361 (2005).

40

41 Saul M. Kassin & Lawrence S. Wrightsman, *On the Requirements of Proof: The Timing of*

42 *Judicial Instruction and Mock Juror Verdicts*, 37 J. Personality & Social Psychology

43 1877 (1979).

1 J. Clark Kelso, *Final Report of the Blue Ribbon Commission on Jury System Improvement*, 47
2 Hastings L.J. 1433 (1996).
3
4 Geoffrey P. Kramer & Doreen M. Koenig, *Do Jurors Understand Criminal Jury Instructions?*
5 *Analyzing the Results of the Michigan Juror Comprehension Project*, 23 Univ. Mich. J.
6 L. Reform 401 (1990).
7
8 Alayna Jehle & Monica K. Miller, *Controversy in the Courtroom: Implications of Allowing*
9 *Jurors to Question Witnesses*, 32 Wm. Mitchell L. Rev. 27 (2005).
10
11 Richard Lempert, *Civil Juries and Complex Cases: Taking Stock after Twelve Years*, in *Verdict:*
12 *Assessing the Civil Jury System* (Robert E. Litan ed. 1993).
13
14 Joel D. Lieberman & Bruce D. Sales, *What Social Science Teaches Us About the Jury Instruction*
15 *Process*, 3 Psychol. Pub. Pol'y & L. 589 (1997).
16
17 Nancy S. Marder, *Bringing Jury Instructions into the Twenty-First Century*, 81 Notre Dame L.
18 Rev. 449 (2006).
19
20 Nancy S. Marder, *The Jury Process* (Foundation Press 2005).
21
22 Nicole L. Mott, *The Current Debate on Juror Questions: "To Ask or Not to Ask, That Is the*
23 *Question,"* 78 Chi.-Kent L. Rev. 1099 (2003).
24
25 New York State Unified Court System, *Final Report of the Committees of the Jury Trial Project*
26 (2005), available at <http://www.nyjuryinnovations.org/>.
27
28 Steven D. Penrod & Larry Heuer, *Tweaking Commonsense: Assessing Aids to Jury Decision*
29 *Making*, 3 Psychol. Pub. Pol'y & L. 259 (1997).
30
31 Alan Reifman et al., *Real Jurors' Understanding of the Law in Real Cases*, 16 Law & Hum.
32 Behav. 539 (1992).
33
34 David L. Rosenhan et al., *Notetaking Can Aid Juror Recall*, 18 Law & Hum. Behav. 53 (1994).
35
36 Leonard B. Sand & Steven Alan Reiss, *A Report on Seven Experiments Conducted by District*
37 *Court Judges in the Second Circuit*, 60 N.Y.U. L. Rev. 423 (1985).
38
39 William W. Schwarzer, *Communication with Juries: Problems and Remedies*, 69 Cal L. Rev.
40 731 (1981).
41
42 William W. Schwarzer, *Reforming Jury Trials*, 1990 U. Chi. Legal F. 119.
43

1 Vicki L. Smith, *Prototypes in the Courtroom: Lay Representations of Legal Concepts*, 61 Journal
2 of Personality & Social Psychology 857 (1991).

3
4 Vicki L. Smith, *Impact of Pretrial Instruction on Jurors' Information Processing and Decision*
5 *Making*, 76 J. Applied Psychol. 220 (1991).

6
7 Vicki L. Smith, *The Feasibility and Utility of Pretrial Instruction in the Substantive Law: A*
8 *Survey of Judges*, 14 Law & Hum. Behav. 235 (1990).

9
10 Peter Meijes Tiersma, *Reforming the Language of Jury Instructions*, 22 Hofstra L. Rev. 37
11 (1993).

12
13 Neil Vidmar & Valerie P. Hans, *American Juries: The Verdict* (2007).